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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,112	09/24/2003	Thomas J. Wheeler	OLYM/0095	8153

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EXAMINER

GUADALUPE, YARITZA

ART UNIT PAPER NUMBER

2859

DATE MAILED: 07/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

H.A

Office Action Summary	Application No. 10/670,112	Applicant(s) WHEELER ET AL.	
	Examiner Yaritza Guadalupe McCall	Art Unit 2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-10,12-15,19-21,33-38 and 40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 2,4-10,12,13,33,34,38 and 40 is/are allowed.
- 6) ☒ Claim(s) 1,14,15,20,21 and 35-37 is/are rejected.
- 7) ☒ Claim(s) 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The finality of the previous Office Action mailed on April 6, 2006 is hereby withdrawn in view of further consideration to the After Final Amendment filed

July 5, 2005.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wu (US Pub. No. 2004/0123472) in view of Chen (US 6,763,598).

In regards to claim 1, Wu discloses a laser level assembly comprising a base (1A) having a laser (10) coupled thereto; at least one attachment means (12, 72) for attaching the laser level to a surface, the attachment means being a magnet

(12), and an anchoring assembly (72); an adjustment assembly (5, 53), wherein the adjustment assembly provides a micro adjustment of at least a portion of the laser level relative to the surface an auxiliary base attachable to the base to provide leveling adjustments, and a lens (10A).

Wu does not disclose a lens assembly as stated in claim 1.

With respect to claim 1 : Chen discloses a laser level device comprising a lens assembly (5) movable between at least two positions, wherein each position of the lens assembly selectively aligns and positions a different one of at least two lenses (52) with respect to the laser in order to increase the versatility of the device by providing a projected reference dot, horizontal reference line or vertical reference line as desired by the user. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to replace the lens arrangement (10A) disclosed by Wu with a lens assembly as taught by Chen in order to increase the versatility of the device by providing a projected reference dot, horizontal reference line or vertical reference line as desired by the user.

3. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (US 6,763,598).

In regards to claim 14, Chen discloses a laser level assembly (1) comprising a base (4); a laser (3); and a lens assembly (5), wherein the lens assembly selectively aligns and positions one of at least two lenses with respect to the laser, and wherein the lens assembly is rotatable (See Column 2, lines 55 – 59) and comprising a rotary part (5) that spaces the at least two lenses on a plane in a circular arrangement and a detent mechanism (43, 57).

Regarding claim 15, Chen further discloses said lens assembly comprising at least three lenses (52).

Chen does not disclose the detent mechanism urging into a profile on an outside circumference of the rotary part as stated in claim 14.

In regards to claim 14 : Chen discloses a laser level assembly comprising a detent mechanism (43, 57) wherein a protrusion / ball (43) and a detent (57) are provided on the back surface of the rotary part of the lens assembly (5). Changing the location of the protrusion and detent from the location shown by Chen to a location on the profile of an outside circumference of the rotary part, absent any criticality, is only considered to be an obvious modification of Chen's device that a person having ordinary skill in the art at the time the invention was made would be able to provide using routine experimentation since the courts have held that there is no invention in shifting the position if the operation of the device would not be thereby modified. *In re Japikse*, 86 USPQ 70 (CCPA 1950).

4. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (US 6,763,598) in view of Claxton (US 5,394,616).

Chen discloses a rotating laser assembly as stated in paragraph 3 above.

Chen does not disclose the 45-degree level vial as stated in claim 20.

In regards claim 20 : Chen discloses a bubble level vial (2) disposed in the upper surface of the assembly. Claxton discloses a laser positioning device comprising a plurality of level vials (41, 42, 43), one of said level vials (43) being disposed at a 45 degree angle (See Figure 2) in order to function as identification means or position identifiers of the spatial orientation of the device. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a bubble level vial at a 45 degree angle as taught by Claxton in the device disclosed by Chen in order to provide a fast visual indicator or identifier of the spatial orientation of the device.

5. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (US 6,763,598) in view of Tursi (US 4,924,597).

Chen discloses a rotating laser assembly as stated in paragraph 3 above.

Chen does not disclose the belt clip as stated in claim 21.

Regarding claim 21 : Tursi further discloses a device having a belt clip (50) provided on a side wall of the housing (12), said belt clip being sized and configured to securely mount the housing to the user's belt (See Column 3, lines 44 – 46). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add a belt clip as taught by Tursi to the device disclosed by Chen in order to provide a transporting mechanism that securely mounts the housing to the user's belt when the device is not being used.

6. Claims 35 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wu (US Pub. No. 2004/0123472) in view of Gingras (US 6,253,670).

Wu discloses a laser level assembly comprising a base (1A) having a laser (10) coupled thereto; at least one attachment means (12, 72) for attaching the laser level to a surface, the attachment means being a magnet (12), and an anchoring assembly (72); an adjustment assembly (5, 53), wherein the adjustment assembly provides a micro adjustment of at least a portion of the laser level relative to the surface an auxiliary base attachable to the base to provide leveling adjustments, and a lens (10A).

Wu does not disclose the suction assembly as stated in claim 35.

With regards to the suction assembly : Gingras discloses an apparatus comprising a base (52) removably fixed to the apparatus and comprising a suction assembly (54) and a lever (56) operable to ensure fixation of the suction cup (54) to the surface. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to replace the attachment means disclosed by Wu with a suction assembly and lever as taught by Gingras since these are well known fasteners that are alternatively used to secure hold a structure to a surface.

In regards to claim 35, the method for projecting a reference line on an object comprising the steps of contacting a suction assembly of a laser level to a surface; rotating a lever of the suction assembly to raise a portion of a pad/suction cup thereby creating a suction between the pad/suction cup and the surface; and projecting a laser on the object to display the reference line would be achieved by the regular operation of the device disclosed by Wu and Gingras.

Regarding claim 37, the method including the step of rotating an adjustment handle (53 of Wu) to provide micro adjustments of the laser level relative to the surface will be achieved by the regular operation of the device disclosed by Wu and Gingras.

7. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wu (US Pub. No. 2004/0123472) in view of Gingras (US 6,253,670), as applied to claims 35 and 37 above, and further in view of Chen (US 6,763,598).

Wu and Gingras disclose an apparatus as stated in paragraph 6 above.

Wu and Gingras does not disclose the rotary part as stated in claim 36.

With respect to the rotary part : Chen discloses a laser level assembly (1) comprising a base (4); a laser (3); and a lens assembly (5), wherein the lens assembly selectively aligns and positions one of at least two lenses with respect to the laser, and wherein the lens assembly is rotatable (See Column 2, lines 55 – 59) and comprising a rotary part (5) that spaces the at least two lenses on a plane in a

circular arrangement and a detent mechanism (43, 57) in order to increase the versatility of the device by providing a projected reference dot, horizontal reference line or vertical reference line as desired by the user. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to replace the lens arrangement (10A) disclosed by Wu and Gingras with a lens assembly as taught by Chen in order to increase the versatility of the device by providing a projected reference dot, horizontal reference line or vertical reference line as desired by the user.

Regarding claim 36, the method further comprising the step of rotating a rotary part to select a lens will be performed by the regular operation of the device disclosed by Wu, Gingras and Chen.

Allowable Subject Matter

8. Claims 2, 4 – 10, 12 – 13, 19, 33 – 34, 38 and 40 are allowed.

Response to Arguments

9. Applicant's arguments with respect to claims 1 – 2, 4 – 10, 12 – 15, 19 – 21, 33 – 38 and 40 have been considered but are moot in view of the new ground(s) of rejection.

The Examiner recognizes that Applicant's submission of the After Final Amendment was in response to the allowable subject matter indicated in the previous Office Action. In view of the new grounds of rejection, if the Applicant wishes to rejoin the finally rejected claims, he may do so in response to this Office Action.

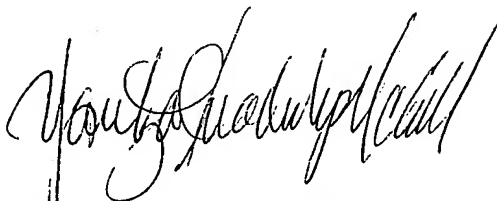
Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yaritza Guadalupe McCall whose telephone number is (571)272 -2244. The examiner can normally be reached on 8:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

YGM
July 20, 2005



Yaritza Guadalupe-McCall
Patent Examiner
Art Unit 2859